



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1995

Mr. Brendan Hall
Attorney at Law
P.O. Box 2725
Harlingen, Texas 78550

OR95-037

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30893.

The City of Harlingen (the "city") has received a request under the Open Records Act for the "[t]erms of the city attorney personnel matter (resignation) and whether a financial settlement involving taxpayer money is involved." You have sent for our review a copy of a settlement agreement signed by the former city attorney and the city. You claim that the agreement is excepted from disclosure by sections 552.102, 552.103, and 552.107.

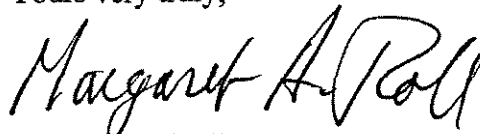
Section 552.102 excepts from disclosure information in a personnel file, "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This section applies only if the information in a personnel file meets the test for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld only if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 444 (1986), this office determined that the public has a genuine interest in the circumstances of a public employee's resignation or termination. Furthermore, Open Records Decision No. 444 reiterated the principle that a governmental body may not simply agree to keep information confidential. Open Records Decision No. 444 at 6. Therefore, you may not withhold the agreement requested in this case under section 552.102.

Section 552.103 applies only when litigation is pending or reasonably anticipated. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 5. You have given no indication that litigation is pending or that it is reasonably anticipated. Therefore, section 552.103 does not protect this document from required public disclosure.

We also conclude that section 552.107 does not except the agreement from required public disclosure. Section 552.107 excepts from disclosure information protected by the attorney-client privilege and information the disclosure of which has been prohibited by court order. Open Records Decision Nos. 574 (1990) at 5; 415 (1984) at 2. Section 552.107 does not, however, protect all communications between a client and an attorney, especially a former attorney. Open Records Decision No. 574 (1990) at 3. The agreement in this case was executed by both parties to the dispute and, thus, is not protected by the attorney-client privilege. See Tex. R. Civ. Evid. 503(a)(5); *Lewis v. State*, 709 S.W.2d 734, 736 (Tex. App.--San Antonio 1986, pet. ref'd, untimely filed). Furthermore, as noted above, the agreement did not arise out of any legal proceedings; therefore, no court order prohibits the disclosure of the agreement. For these reasons, you may not withhold the requested agreement under section 552.107. Because the agreement is not protected under sections, 552.102, 552.103, or 552.107, you must release the agreement in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office..

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/PIR/rho

Ref: ID# 30893

Enclosures: Submitted documents

cc: Mr. Wayne Hall
Valley Morning Star
1310 South Commerce
Harlingen, Texas 78550
(w/o enclosures)